



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Utah State Office
P.O. Box 45155
Salt Lake City, UT 84145-0155
<http://www.blm.gov>



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MAY 25 2010

DECISION

Red Rock Forests	:	Protest of the Inclusion of Parcel
Attn: Harold Shepherd, Executive Director	:	UT0510-037 in the May 25, 2010
P.O. Box 298	:	Competitive Oil and Gas Lease Sale
Moab, Utah 84532	:	

Protest Denied

On April 9, 2010, the Bureau of Land Management (BLM) provided notice to the public that certain parcels of land would be offered in a competitive oil and gas lease sale scheduled for May 25, 2010. The notice indicated that the protest period for the lease sale would end on May 10, 2010. Red Rocks Forest (RRF) submitted a timely written protest to the inclusion of one parcel, UT0510-037/UTU87902¹, (Parcel 037) within this sale. For the reasons set forth below, RRF's protest is denied.

RRF Protest Contentions and the BLM Responses

RRF contention: The BLM violated the National Environmental Policy Act (NEPA) by failing to consider a no-leasing alternative.

BLM response: Leasing, exploration and development of oil and gas resources are discussed in the Moab Field Office's (MFO) Record of Decision (ROD) and Approved Resource Management Plan (RMP) on pages 25-27, 73-77, appendices A-C, Q and R and Map 12. A no-leasing alternative was considered but eliminated from further analysis in the MFO Proposed RMP and Final Environmental Impact Statement (EIS) (at Section 2.3.3). Given the potential range of decisions for oil and gas leasing in the four alternatives studied in the MFO Draft RMP/EIS, public lands were placed into one of four categories: 1) open for leasing subject to standard lease terms and conditions; 2) open for leasing subject to moderate constraints such as timing constraints; 3) open to leasing subject to major constraints such as no surface occupancy (NSO); and, 4) unavailable for leasing. This range of alternatives was reasonable and fully complied with NEPA. See Southern Utah Wilderness Alliance, 177 IBLA 29 (2009).

RRF contention: The Moab RMP did not adequately consider Class 1 Airshed designations, especially around National Parks, and the parcel should be permanently deferred.

¹ The "Re:" heading on the first page of the RRF protest refers to parcel number UTU8792 (UT0510-037) and, consequently, it is assumed that RRF's intent was to protest parcel number UTU87902. However, throughout the protest, there are numerous incorrect references to parcels from previous BLM lease sales. For example, RRF (at page 3, 4, and 8) refers to parcels 112, 129, 132, 133, 134, 135, 137, 139, 161, 162, 165, 166 and 230. These parcels are not being offered in the May 2010 sale and, thus, are not being discussed in this decision.

BLM response: As the party challenging the BLM's inclusion of Parcel 037 in the lease sale, RRF bears the burden of demonstrating with objective of proof that the inclusion was premised on a clear error of law, error of material fact, or failure to consider a substantial environmental question of material significance. RRF has not met this burden. RRF provides no supporting evidence that leasing the Parcel 037 would cause significant deterioration of the Class 1 Airshed designations of Arches and Canyonlands National Parks. Further the BLM has attached an air quality stipulation to the parcel that requires the following:

All new and replacement internal combustion gas field engines of less than or equal to 300 design-rated horsepower must not emit more than 2 gms of NO_x per horsepower-hour.

and

All new and replacement internal combustion gas field engines of greater than 300 design rated horsepower must not emit more than 1.0 gms of NO_x per horsepower-hour.

RRF contention: Leasing the parcels violates the National Historic Preservation Act (NHPA) because the BLM has not consulted adequately with Native American tribes and with interested members of the public (like RRF) as part of the NHPA process.

BLM response: On February 25, 2010, the BLM initiated consultation with the following Native American Tribes: Navajo, Paiute, Hopi, Zuni, White Mesa Ute, Uintah and Ouray Ute, Southern Ute and Ute Mountain. Concerns were not expressed by the Tribes. In addition, as mentioned above, on April 10, 2010, the BLM provided notice of the May 25, 2010 lease sale, including listing the specific parcels proposed for inclusion in the sale. As demonstrated by the RRF protest, members of the public had the opportunity to provide input to the BLM on any concerns regarding the parcels proposed for inclusion in the sale and the opportunity to protest such inclusion. Although RRF now argues that the BLM failed to adequately consult with members of the public, RRF has not informed the BLM what degree of public participation is required under the NHPA or provided any legal authority for their conclusory assertions. Moreover, RRF has not suggested, much less shown, that that BLM's consultation has overlooked a potentially eligible property. Consequently, RRF's claim that the BLM did not adequately consult with members of the public is groundless.

Moreover, to protect any cultural resources that may be found on a lease parcel, the BLM places the following stipulation on every lease parcel:

This lease may be found to contain historic properties and/or resources protected under the National Historic Preservation Act (NHPA), American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, E.O. 13007, or other statutes and executive orders. The BLM will not approve any ground disturbing activities that may affect any such properties or resources until it completes its obligations under applicable requirements of the NHPA and other authorities. The BLM may require modification to exploration, or development proposals to protect such properties, or disapprove any activity that is likely to result in adverse effects that cannot be successfully avoided, minimized or mitigated.

Consequently, the RRF's mere disagreement with the methodology employed by the BLM in the Section 106 consultation process, by itself, cannot establish any error in that process.

RRF contention: The BLM has violated the Federal Land Policy and Management Act (FLPMA) because of the changed circumstances and a lack of public comment opportunity. The RMP's general analysis and leasing decisions are an insufficient basis for leasing.

BLM response: As stated in the Determination of NEPA Adequacy (DNA) prepared by the MFO at sections A-C, oil and gas leasing and development was thoroughly analyzed in the draft and final EIS documents for the MFO RMP. The MFO RMP provided the basis for land use

allocations including oil and gas leasing decisions. Based on its review, the MFO determined that the NEPA analysis completed as part of the RMP process sufficiently assessed the environmental consequences of leasing the parcels. A DNA is an appropriate means for the BLM to assess whether existing NEPA documents adequately analyze the anticipated impacts of an action so that the agency may proceed without performing further NEPA review. See Pennaco Energy v. U.S. Dep't of the Interior, 377 F.3d 1147, 1162 (10th Cir. 2004); Colorado Envtl. Coal., 173 IBLA 362, 372 (2008); Ctr. for Native Ecosystems, 170 IBLA 331, 345-46 (2006); S. Utah Wilderness Alliance, 166 IBLA 270, 282-83 (2005). In addition, RRF's contention that the BLM violated Section 202(f) of FLPMA, 43 U.S.C. § 1712(c), by failing to provide for adequate public comment (and presumably protest) on the May 25, 2010 lease sale lacks any merit. The RRF protest, which responded to the BLM's April 10, 2010 notice of the sale, completely undermines its contention. Moreover, Section 202(f) of FLPMA sets forth requirements concerning the land use planning process, which is something very different from the lease sale process. Consequently, RRF's reliance on Section 202(f) is misplaced and its contention is groundless.

RRF contention: The BLM failed to provide a map of the lease parcels.

BLM response: The Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA), 30 U.S.C. § 226(f), requires, among other things, that a notice of a proposed lease sale "include terms or modified lease terms and maps or a narrative description of the affected lands." The BLM fully complied with this requirement by providing the public with information on the lease parcels with legal descriptions and maps showing their location, along with the stipulations and notices attached to each parcel. Additional maps were made available to the public for review at the BLM's Utah State Office Public Room in Salt Lake City, Utah and on the BLM's Utah internet site. RRF's contention that this information was inadequate lacks merit.

RRF contention: The BLM has not conducted a thorough cumulative impact analysis that includes the impacts to aquatic and terrestrial environments in recent drought years due to low stream flows, increased water temperatures and interruption of wildlife corridors due to development. The BLM needs to conduct an assessment of the vulnerability of aquatic and terrestrial wildlife species and natural systems that will be adversely affected by global climate change.

BLM Response: RRF makes only conclusory allegations regarding the resources that it believes are at risk of cumulative impacts. RRF does not, however, identify any particular cumulative impact that the BLM failed to consider or establish that such impact would be significant. Consequently, RRF fails to show error in the MFO RMP's cumulative impacts analysis. See San Juan Citizen's Alliance, 129 IBLA 1, 11 (1994).

Further, the BLM has assessed the potential impacts to the aquatic and terrestrial environments as a result of leasing. The BLM also coordinated extensively with and requested comments from U. S. Fish and Wildlife Service (USFWS) and Utah Division of Wildlife Resources (DWR) on the May 2010 Oil and Gas Lease Sale list on a parcel-specific basis.

The USFWS and DWR each provided comments on a parcel-specific basis and all recommendations were incorporated into the final parcel list. The review by the two agencies' field specialists considered the effects of oil and gas leasing activity on aquatic and terrestrial species and habitats. Therefore, RRF's arguments concerning impacts to aquatic and terrestrial environments are groundless.

RRF contention: The BLM is inconsistent in handling and executing oil and gas lease sales in Utah and the BLM has failed to prepare adequate RMPs.

BLM response: RRF's contentions are simply generalizations that are factually inaccurate and that fail to meet RRF's burden in challenging the inclusion of parcels in the lease sale.

RRF contention: The NSO Stipulation is not protective. The land around the NSO is not

protected from drilling infrastructure and access roads adjacent to leases and the NSO can be removed after the lease is issued.

BLM response: The application of NSO stipulations was analyzed in the RMP and applied to areas that warranted that level of protection, whereas adjacent or surrounding lands were determined to have adequate protection without the need to apply NSO stipulations. Drilling infrastructure and access roads are considered if and when they are proposed, along with proposed well locations. At the time site-specific development is proposed (subsequent to leasing), potential impacts and current resource conditions are analyzed. If waiver, exception or modification criteria were provided for in the RMP, they are considered as part of this analysis. Further, RRF has not provided any specific instance where NSO has been inappropriately removed from a lease after issuance.

RRF contention: Visual resource management (VRM) objectives might not be met along the access routes to the lease parcels.

BLM response: The BLM's VRM classifications were developed as part of the RMP process, and correctly applied to all of the lease parcels to be included in the May 2010 lease sale, including Parcel 037. RRF's generalization regarding VRM objectives does not provide any evidence of error in including Parcel 037 in the lease sale.

RRF contention: The Department of the Interior has violated the Endangered Species Act (ESA) by not including greater sage-grouse as an endangered species.

BLM response: Greater sage-grouse is not an endangered species at this time. The species underwent a review by the USFWS and was determined to be a candidate species in 2010. Therefore, BLM will continue to manage it as a sensitive species and coordinate with the DWR and USFWS in doing so.

RRF contention: The BLM has violated the Clean Water Act and the Utah Water Code by failing to adopt a water protection plan; not recognizing drought and climate interactions; not acknowledging water shortages, supply and state water right allocations (including senior and Tribal rights); omits analysis of possible water pollution and deterioration of water quality (including groundwater); not identifying impairment of public recreation and continued species existence.

BLM response: At the leasing stage, the BLM works with the Utah Division of Environmental Quality (DEQ) to provide notice of protected Drinking Water Zones. The BLM also utilizes appropriate lease stipulations, including setback requirements from springs, riparian areas, floodplains, and waterways, and Controlled Surface Use for steep slopes. Therefore, at the leasing stage, the BLM has adequately considered water quality and quantity protections.

RRF's concerns regarding water quality and quantity, and water rights are more properly directed to the exploration and development stage (should such activities be proposed) rather than at the leasing stage. Oil and gas operating orders and site-specific analysis of drilling proposals are considered at the time an Application for Permit to Drill (APD) is filed, and protection of water sources is considered at that time. RRF will have the opportunity to participate in that process, should there be a subsequent proposal for exploration and development on Parcel 037. The BLM has not violated the Clean Water Act or the Utah Water Code by including Parcel 037 in the May 25, 2010 lease sale.

Conclusion: The RRF protest contains erroneous information and statements in some cases, identifies incorrect parcels (apparently from other lease sales), and overall appears to be a poorly constructed protest with excerpts, including parcel numbers, lifted verbatim from other protests. Furthermore, the RRF protest makes no attempt to explain how its general allegations may apply to Parcel 037. Contrary to its general allegations, RRF does not provide any specific data/information to support a conclusion that inclusion of the parcel in the May 25, 2010 lease sale and leasing the parcel will violate the NEPA, NHPA, FLPMA, or the ESA. RRF appears to

largely misunderstand the BLM's leasing process versus that of the possible subsequent exploration and development of a leased parcel. Consequently, most of RRF's concerns and arguments are incorrectly focused in a leasing protest as opposed to the stage when authorizations are sought for exploration and development, including the acquisition of appropriate State of Utah permits or authorizations².

For the BLM to have a reasonable basis to consider any law or regulation-based arguments in future protests by RRF, RRF must identify for each parcel that is protested the specific ground for protest and explain how it applies to the parcel. Any allegations of error based on fact must be supported by competent evidence, and a protest may not merely incorporate by reference arguments made in other protests or decision making processes. Further, RRF must consider whether any lease stipulations or notices that apply to a particular parcel may be relevant to RRF's allegations, and explain how such stipulations or notices do not obviate the allegations. Failure to comply with any of the foregoing may result in the summary dismissal of the protest.³

Finally, challenges to the adequacy of the MFO Record of Decision and Approved RMP will not be addressed here. The public, including RRF, was afforded ample opportunity to participate in the development of the RMP and underlying EIS. RRF is referred to the BLM's planning program information available online⁴.

For the above-stated reasons, the RRF protest is denied as it pertains to the inclusion of Parcel 037 (UT0510-037) in the May 25, 2010 lease sale. If BLM receives an acceptable offer on Parcel 037, it will issue the relevant lease subsequent to issuance of this decision and any other necessary protest decision.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and the enclosed Form 1842-1. If an appeal is taken, the notice of appeal must be filed in this office (at the address shown on the enclosed Form) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay pursuant to 43 C.F.R. Part 4, Subpart B § 4.21, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

² See BLM's Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development (The Gold Book), 2007. The preparation of site specific analysis, inspections, reclamation, conditions of approval, other permits or authorizations are detailed. Also included are instructions for construction and maintenance of well sites, roads, transportation, drainage and other infrastructure. The Gold Book is also available online at: http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas.html. Scroll to Operating Requirements.

³ See, e.g., Southern Utah Wilderness Alliance, 122 IBLA 17, 20-21 (1992); John W. Childress, 76 IBLA 42, 43 (1983); Patricia C. Alker, 70 IBLA 211, 212 (1983); Geosearch, Inc., 48 IBLA 76 (1980). The BLM is under no obligation to sort through a protestant's general allegations of error and attempt to discern which alleged errors the protestant intended to invoke for a particular parcel. Such an unduly burdensome and inefficient process would unreasonably divert the time and resources that the BLM otherwise needs to manage the public lands as mandated by Congress.


⁴ The BLM planning process is governed by separate rule and regulation. Information on the BLM's Resource Management Plan protest resolution including regulations and instructions for filing a valid protest and a copy of the BLM Director's Protest Resolution Reports are available on line at: http://www.blm.gov/wo/st/en/prog/planning/protest_resolution.html. Scroll to Utah and Moab Field Office.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to the Office of the Regional Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office.



Selma Sierra
State Director

Enclosures

1. Form 1842-1 (2pp)

cc: Office of the Solicitor, Intermountain Region, 125 So. State St., Suite 6201, Salt Lake City, UT 84138

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

- | | |
|---|---|
| 1. NOTICE OF APPEAL..... | A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the <i>Notice of Appeal</i> in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a <i>Notice of Appeal</i> in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413). |
| 2. WHERE TO FILE

NOTICE OF APPEAL.....

WITH COPY TO SOLICITOR... | Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0151

or

Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101

and

Regional Solicitor, Room 6201, 125 South State Street, Salt Lake City, Utah 84111 |
| 3. STATEMENT OF REASONS

WITH COPY TO SOLICITOR..... | Within 30 days after filing the <i>Notice of Appeal</i> , file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the <i>Notice of Appeal</i> , no additional statement is necessary (43 CFR 4.412 and 4.413).

Regional Solicitor, Room 6201, 125 South State Street, Salt Lake City, Utah 84111 |
| 4. ADVERSE PARTIES..... | Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the <i>Notice of Appeal</i> , (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413). |
| 5. PROOF OF SERVICE..... | Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)). |
| 6. REQUEST FOR STAY..... | Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your <i>Notice of Appeal</i> (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay. |

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office -----	Alaska
Arizona State Office -----	Arizona
California State Office -----	California
Colorado State Office -----	Colorado
Eastern States Office -----	Arkansas, Iowa, Louisiana, Minnesota, Missouri and, all States east of the Mississippi River
Idaho State Office -----	Idaho
Montana State Office -----	Montana, North Dakota and South Dakota
Nevada State Office -----	Nevada
New Mexico State Office -----	New Mexico, Kansas, Oklahoma and Texas
Oregon State Office -----	Oregon and Washington
Utah State Office -----	Utah
Wyoming State Office -----	Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)